HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.No.7538 of 2004

Dated this the 26th day of December, 2007

Between:

M/s. Vishal Enterprises
and another … Petitioners

AND

Smt. R.S. Noorjahan Sultana
And another … Respondents

HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.No.7538 of 2004

ORDER:

This Writ Petition has been filed by the petitioners seeking to call for the records relating to and in connection with the proceedings dated 23.02.2004 issued by the second respondent- Registrar of Firms at the instance of the first respondent in dissolving the Partnership Deed dated 09.06.1999 without following the procedure prescribed under law and declare it as illegal and unconstitutional and violative of principles of natural justice.

2) The petitioners are contending that as per Condition No.18 of the Partnership Deed dated 09.06.1999, the Partnership shall not be dissolved and it will be continued with the remaining partners even in case of retirement, insolvency or death of any partner.

3) For proper appreciation, it is appropriate to extract the relevant conditions of the Partnership Deed dated 09.06.1999 i.e., Condition Nos.15 and 18, which read as under respectively:

> "15. That the parties to the Partnership Deed agree that they shall not, during the currency of the Partnership agreement with the Corporation, either jointly or individually, change the constitution of the Firm in any manner, either by taking a new Partner or by reducing or relinquishing their interest in the firm either fully or in part, either directly or indirectly without the consent and concurrence of Indian Oil Corporation Limited."
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> "18. That the retirement, insolvency or death of any Partner shall not dissolve the Partnership and the remaining Partner shall continue the Partnership with or without admitting new Partners subject to prior written approval of M/s. Indian Oil Corporation Limited."

4) A perusal of the Condition No.15, it is clear that the retiring partner is supposed to obtain prior consent and concurrence of the Indian Oil Corporation Limited.

5) The learned counsel for the petitioners' further submitted that under Section 63 of the Indian Partnership Act (for short 'the Act'), the Registrar of Firms has to be informed the changes, if any, in the prescribed Form No.V prescribed under the Andhra Pradesh

Partnership Rules, 1957, which was filled up under Section 59 of the Act and non sending of the information in the prescribed form also amounts to violation of the mandatory provision of the Act. Therefore, the Firm is not liable to be dissolved and the Registrar of the Firms ought not to have passed the orders dissolving the Partnership Firm without following the procedure prescribed under law.

6) The learned counsel for the respondents submitted that Section 43 of the Act comes into play as the partnership deed was executed agreeing with the parties at will to issue notice to dissolve the firm.

7) Section 43 of the Indian Partnership Act, 1932 reads as follows:

> "43. **Dissolution by notice of partnership at will**:-- (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
> (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice."

8) After going through the partnership deed dated 09.6.1999, I do not find any such term that the partnership can be dissolved at the will of the one of the partners. Therefore,
I do not find any force in the contention raised by the respondents counsel.

9) In the light of the foregoing reasons, I am inclined to set aside the impugned order passed by the second respondent, dated 23.02.2004 by declaring that it is illegal, unconstitutional and violative of principles of natural justice.

10) Accordingly, the Writ Petition is allowed. No costs.

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Dr.G. YETHIRAJULU, J

Date: 26-12-2007
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